

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. ROBERT D. SACK,
HON. PETER W. HALL,
Circuit Judges.

Guo Tang Zhen, also known as Guo Tuan Zheng, _____
_____*Petitioner,*

-v.-

No. 04-1264-ag
NAC

Alberto R. Gonzales¹, Attorney General of the United States,
Respondent.

FOR PETITIONER: Karen Jaffe, New York, New York.

FOR RESPONDENT: David L. Huber, United States Attorney for the Western District of
Kentucky, Monica Wheatley, Assistant United States Attorney,
Louisville, Kentucky.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft.

1 petition for review is DENIED.

2 Guo Tang Zhen petitions for review of the BIA's February 2004 decision in which the
3 BIA affirmed Immigration Judge ("IJ") Brigitte LaForest's order denying Zhen's applications for
4 asylum, withholding of removal and Convention Against Torture ("CAT") relief, and ordering
5 him removed. We assume the parties' familiarity with the underlying facts, the procedural
6 history, and the scope of the issues presented on appeal.

7 When the BIA summarily affirms the decision of the IJ without issuing an opinion, *see* 8
8 C.F.R. § 1003.1(e)(4), this Court reviews the IJ's decision as the final agency determination. *See,*
9 *e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S. Dep't of Justice*, 362
10 F.3d 155, 158 (2d Cir. 2004). This Court reviews the agency's factual findings, including adverse
11 credibility determinations, under the substantial evidence standard, treating them as "conclusive
12 unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. §
13 1252(b)(4)(B); *see Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).

14 Assuming (contrary to the IJ's finding) that Zhen testified credibly, he failed to establish a
15 nexus to one of the protected statutory bases. The alleged persecution feared by Zhen is based on
16 his asserted belief that the village chief reported him to the police for "assault of a government
17 official and 'anti-revolution.'" Zhen admits that he belonged to no organizations or political
18 groups. He further admits that the village chief reported him to authorities only after he
19 assaulted him. The only actions alleged by Zhen that could be considered politically motivated
20 were those of his father's disagreement with the village chief's tax assessments. The fact that the
21 village chief became insistent with respect to his father's obedience towards the country's tax
22 law is not a basis for claiming persecution. The evidence merely suggests that Zhen lost his
23 temper in the face of persistent tax collectors and consequently committed assault. And Zhen

1 does not raise a persecution claim based on imputed political opinion within his petition and has
2 thus waived such an argument. *See Yueqing Zhang v. Gonzales*, 426 F.3d 540, 546 n.7 (2d Cir.
3 2005); *Norton v. Sam's Club*, 145 F.3d 114, 117 (2d Cir. 1998).

4 Zhen also argues that he will face imprisonment upon his return due to the fact that he
5 illegally departed the country. Although Chinese law does provide for a sentence of
6 imprisonment if a person illegally departs the country, the possibility that an individual may
7 suffer prosecution for violating a generally applicable statute does not, by itself, constitute a valid
8 basis for granting asylum. *See Qun Yang v. McElroy*, 277 F.3d 158, 163 n. 5 (2d Cir. 2002) (*per*
9 *curiam*). Therefore, there was substantial evidence to support the IJs denial of Zhen's asylum
10 application on the basis that he failed to establish a nexus to a protected ground.

11 Because asylum and withholding of deportation "are factually related but with a heavier
12 burden for withholding, it follows that an applicant who fails to establish his eligibility for
13 asylum necessarily fails to establish eligibility for withholding." *Zhou Yun Zhang*, 386 F.3d at
14 71. Because Zhen did not argue his CAT claim in his petition for review to this Court, his
15 claim is deemed waived and will not be addressed on appeal. *See Yueqing Zhang v. Gonzales*,
16 426 F.3d 540, 542 n. 1, 546 n. 7 (2d Cir. 2005); *Norton v. Sam's Club*, 145 F.3d 114, 117 (2d
17 Cir. 1998).

18 _____For the foregoing reasons, the petition for review is DENIED. Having completed our
19 review, any stay of removal that the Court previously granted in this petition is VACATED, and
20 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
21 request for oral argument in this petition is DENIED in accordance with Federal Rule of
22 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: _____